

REGULATION

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Subject: <u>EMPLOYMENT SANCTIONS</u> FOR VIOLATING APPRAISAL METHOD INTEGRITY			

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1. PURPOSE

~~This regulation establishes the guidelines for sanctions when a person's conduct violates the integrity of the appraisal process. The Department of Civil Service staff, with approval from a group leader, may invoke these sanctions when staff determines that a person engaged in practices prohibited in rules 3-1.5 or 2-7.4(b)~~

This regulation implements rules authorizing specific employment sanctions, authorizes additional general employment sanctions, and establishes procedures for applying, appealing, and removing employment sanctions.

2. **CIVIL SERVICE COMMISSION RULE REFERENCE**

Rule 1-12 Political Activities

1-12.1 Candidates for Public Office

- (a) Local office. A classified employee may become a candidate for nomination and election to a local elective office, partisan or nonpartisan, without first obtaining a leave of absence.
- (b) State office. A classified employee may become a candidate for nomination and election to state office if the employee requests a leave of absence without pay. The request must be made at the time of compliance with the candidacy filing requirements or 60 calendar days before the election in question, whichever is closer to the election. An appointing authority shall grant a request for a leave of absence to become a candidate for state office.

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1-12.4 Political Party Activities

An employee in the classified service may:

- (a) Become a member or an officer of a political party committee formed or permitted under the election laws of Michigan or the United States.
- (b) Be a delegate to any convention held by a political party.
- (c) Engage in political activities on behalf of a candidate or issue in a partisan or nonpartisan election.

1-12.5 Political Assessments

The levying, solicitation, collection, or payment of any type of political assessment and the authorizing or ordering of such activity in the classified service are prohibited.

1-12.6 Prohibited during Actual-duty Time

A classified employee shall not engage in any activity permitted under rules 1-12.1 or 1-12.4 during actual-duty time.

1-12.7 Conflict of Interest

- (a) No conflict permitted. Political activity, including election to or the holding of public office by a state classified employee, must not conflict with the satisfactory and impartial performance of duties required in the employee's classified position.

(b) **Compensated employee.** An employee compensated for serving in a staff, advisory, or advocacy capacity in any partisan or nonpartisan election is subject to the requirements of these rules regarding outside employment.

Rule 2-6 Discipline

2-6.1 Discipline

(a) **Authorized.** An appointing authority may discipline a classified employee for just cause.

(b) **Just cause.** Just cause includes, but is not limited to, the following:

(1) Failure to carry out the duties and obligations imposed by the employer, a departmental work rule, or law, including the civil service rules and regulations.

(2) Conduct unbecoming a state employee.

(3) Unsatisfactory service or performance.

(c) **Forms of discipline.** Permissible discipline includes, but is not limited to, the following:

(1) An unsatisfactory probationary rating, an interim rating, or an unsatisfactory follow-up rating.

(2) A written reprimand.

(3) Reduction in pay.

(4) Suspension without pay.

(5) Demotion.

(6) Dismissal from the classified service.

Rule 2-7 Drug and Alcohol Testing

2-7.4 Penalties

(a) **Classified employees.**

(1) **All employees.** An appointing authority shall impose discipline, up to and including dismissal, for violation of this rule. An appointing authority shall prescribe in its departmental work rules the range of penalties, including any mandatory penalties, for violating this rule.

(2) **Employee selected for test-designated position.** An employee selected for a test-designated position is prohibited from serving

in the test-designated position until the employee has submitted to and passed a preappointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the following occurs:

- (A) The employee cannot be appointed, promoted, assigned, recalled, or otherwise placed in the test-designated position.
- (B) The employee is removed from all applicant pools for test-designated positions and is disqualified from any test-designated position for a period of 3 years.
- (C) If the employee interferes with a test procedure or tampers with a test sample, the employee may also be disciplined as provided in subsection (a)(1).

(b) New hires.

(1) Rescission of conditional offer of employment. If a person given a conditional offer of employment fails or refuses to submit to the preemployment drug test, interferes with a test procedure, or tampers with a test sample, the appointing authority must rescind the conditional offer of employment in writing. The written rescission must include notice of the complaint procedure and the 14-day time limit provided in subsection (b)(2). A person whose conditional offer of employment is rescinded must not be appointed to the position in the classified service. The person also is removed from all applicant pools and is disqualified from appointment to the classified service for a period of 3 years.

(2) Complaint by applicant. If a person claims that the rescission of the person's conditional appointment as authorized in subsection (b)(1) was contrary to article 11, §5, of the constitution or a civil service rule or regulation, the person may file a written complaint with the state personnel director.

- (A) A complaint must be received by the state personnel director within 14 calendar days after the appointing authority mailed the written notice of the rescission of the conditional offer of employment and this complaint procedure. The person must also file a copy of the complaint with the appointing authority.
- (B) The director shall review the complaint and issue a decision under procedures authorized in the regulations.
- (C) If the director determines that the rescission was contrary to article 11, §5, of the constitution or a civil service rule

or regulation, the director may order an appropriate remedy, including, but not limited to, reinstating the offer of employment, ordering another drug test, or requalifying the person for appointment to the classified service.

(D) Either the person or the appointing authority may appeal the director's final decision to the civil service commission.

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Rule 2-8 Ethical Standards and Conduct

2-8.1 Ethical Conduct Required

Employment in the state classified service demands a high degree of loyalty and imposes high ethical standards on employees to ensure the integrity of state government and maintain effective services. All employees must meet these ethical standards and all appointing authorities are obligated to enforce these ethical standards.

2-8.2 Prohibitions

(a) All employees. A classified employee shall not do any of the following:

(1) Divulge or release, for financial gain for the employee or a member of the employee's immediate family, any confidential information that is not by law, rule, regulation, or court order available to members of the general public. However, this subsection does not prohibit an employee from disclosing to a public body a violation or suspected violation as authorized in rule 2-10 [Whistleblower Protection] unless otherwise prohibited by statute, court order, or professional ethics.

(2) Engage in or agree to engage in, for financial gain for the employee or a member of the employee's immediate family, any business transaction or private arrangement that accrues from or is based on the employee's official position or on confidential information gained by reason of the employee's position.

(3) Solicit, accept, or agree to accept anything of value (1) from any designated representative [as defined in rule 9-1] or (2) under any circumstances that could reasonably be expected to influence the manner in which the employee performs work or makes decisions.

(4) Make available any consideration, treatment, advantage, or favor beyond that which is generally granted or made available to others under similar circumstances.

(5) Represent or act as an agent for any private interests, whether for compensation or otherwise, in any transaction in which the

state has a direct and substantial interest and which could reasonably be expected to result in a conflict between the employee's private interests and official state responsibilities.

- (6) Exercise any decision-making authority of the state regarding any state regulation, enforcement, auditing, licensing, or purchasing with respect to any business or entity in which the employee or a member of the employee's immediate family has any financial interest.
- (7) Engage in supplemental employment that conflicts with the satisfactory or impartial performance of the employee's state duties.
- (8) Engage in supplemental employment without the express written consent of the employee's appointing authority.
- (9) Engage in any supplemental employment during actual-duty time.
- (10) Request or use sick leave to engage in supplemental employment.
- (11) Use any state funds, property, or equipment in or for the benefit of any supplemental employment.
- (12) Fail to timely, fully, and accurately report to the employee's appointing authority any of the following:
 - (A) Any interest of the employee or the employee's immediate family in any business or entity with which the employee has direct contact while performing official duties as a classified employee.
 - (B) Any supplemental employment or change in approved supplemental employment required by this rule, applicable regulations, or departmental work rules.
- (b) Attorneys. In addition to any other prohibition, an employee occupying a classified position that requires the employee to be a licensed attorney in the State of Michigan shall not do any of the following, whether for compensation or otherwise:
 - (1) Represent any person or entity with an interest adverse to the State of Michigan or any of its agencies or instrumentalities (1) in any criminal, civil, regulatory, or administrative matter or (2) before any court or administrative agency.
 - (2) Represent any private interest before any state administrative agency.

(3) Represent another state employee in any matter, including a personnel matter, against the State of Michigan or any of its agencies or instrumentalities.

(c) **Excluded employees.** In addition to any other prohibition, the following employees may not represent another employee in any matter or proceeding related to employment, including, but not limited to, investigations, disciplinary conferences, grievances, civil service technical matters, or civil service proceedings:

(1) An appointing authority who is a classified employee.

(2) An excluded employee occupying a position in human resources under the direction of an appointing authority.

2-8.3 Disclosure

(a) Personal and financial interests.

(1) **Disclosure.** At least annually, an employee shall disclose to the employee's appointing authority all personal or financial interests of the employee or members of the employee's immediate family in any business or entity with which the employee has direct contact while performing official duties as a classified employee.

(2) **Action by appointing authority.** If an appointing authority determines that the personal or financial interests of an employee or the employee's immediate family represent an unacceptable conflict of interest with the employee's state duties, the appointing authority may take any of the following actions to eliminate the conflict:

(A) Require appropriate actions by the employee or the employee's immediate family regarding the personal and financial interests.

(B) Change the employee's job, including, but not limited to, imposing a lateral job change, demoting the employee, changing reporting relationships, changing work locations, or reassigning specific tasks.

(C) Separate the employee from the classified service if the conflict cannot be eliminated.

(b) Supplemental employment.

(1) **Disclosure and approval required.** An employee must report all supplemental employment to the employee's appointing authority and must receive approval from the appointing authority to engage in supplemental employment.

(A) **Employees.** Before engaging in supplemental employment, an employee must disclose the nature and extent of the supplemental employment to the employee's appointing authority. Thereafter, an employee must report all supplemental employment at least annually as required by this rule, applicable regulations, and the appointing authority.

(B) **Newly-hired employees.** A newly-hired employee who is already engaging in supplemental employment at the time of hire must disclose the nature and extent of the supplemental employment as required by an appointing authority.

(C) **Changes.** If there is a change in approved supplemental employment, the employee must disclose the nature and extent of the change to the employee's appointing authority within 14 calendar days.

(2) **Action by appointing authority.** If an appointing authority determines that supplemental employment (1) interferes with the employee's attendance or efficiency or otherwise conflicts with the satisfactory performance of the employee's state duties or (2) represents an unacceptable conflict of interest with the employee's state duties, the appointing authority may take any of the following actions:

(A) **Withhold or withdraw approval to engage in supplemental employment.**

(B) **Require the employee to modify, limit, or terminate the supplemental employment.**

(C) **Change the employee's job, including, but not limited to, imposing a lateral job change, demoting the employee, changing reporting relationships, changing work locations, or reassigning specific tasks.**

(D) **Separate the employee from the classified service if the conflict cannot be eliminated.**

(3) **Service in the uniformed services; exception.** An employee is not required to obtain approval to engage in supplemental employment in the uniformed services. However, unless precluded by military necessity, an employee must give advance written or verbal notice to the appointing authority of any absence from state duties for service in the uniformed services.

(4) **Applicants.** As part of the appraisal process, an appointing authority may require an applicant to disclose the nature and

extent of all employment that the applicant intends to continue as supplemental employment after the applicant is hired into the classified service.

2-8.4 Compliance

As a condition of continued employment in the classified service, an employee must comply with the requirements of applicable rules, regulations, departmental work rules, and individual requirements imposed by the employee's appointing authority.

2-8.5 Discipline

An employee who engages in conduct prohibited by rule 2-8, an applicable regulation, a departmental work rule, or an individual requirement imposed by the employee's appointing authority may be disciplined, up to and including dismissal from the classified service.

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Rule 2-20 Workplace Safety

2-20.1 Acts of Violence and Threats of Violence

- (a) **Prohibited Acts.** An employee shall not commit an act of violence or a threat of violence.
- (b) **Requirement to Report.** If an employee becomes aware of an act of violence or a threat of violence, the employee shall immediately report the act or threat to the appointing authority or the appointing authority's designee.
- (c) **Action by Appointing Authority.** An appointing authority or designee who receives a credible report of an act of violence or a threat of violence shall take reasonable actions to protect employees.

2-20.2 Firearms and Explosives

- (a) **Carrying and Possession Prohibited; Exceptions.** An employee shall not carry or possess a firearm or explosive at a state workplace or during actual-duty time, except as authorized below:

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Rule 3-1 Examinations

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3-1.5 Integrity of Process

To be considered for appraisal or appointment, an applicant shall comply with the established procedures and processes.

- (a) **Prohibited practices.** During the application, appraisal, or appointment process, a person shall not do any of the following:

- (1) *Make any false statement or omissions of a material fact.*
 - (2) *Misrepresent education or experience.*
 - (3) *Engage in deception or fraud.*
 - (4) *Cheat.*
 - (5) *Compromise the integrity of the appraisal process.*
 - (6) *Violate rule 2-7 [Drug and Alcohol Testing].*
- (b) **Sanctions.** *If the department of civil service finds that an applicant has engaged in any prohibited act, the department may do any of the following:*
- (1) *Cancel or limit the applicant's eligibility for state employment.*
 - (2) *Require the separation of the applicant from state employment.*
 - (3) *Impose any other or additional sanction that is appropriate.*

Rule 3-2 Applicant Pools and Recall Lists

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3-2.2 Removal from Applicant Pool

The department of civil service may remove a person from an applicant pool for any one of the following reasons:

- (a) *Appointment.*
- (b) *Separation or retirement from state service.*
- (c) *Evidence that the person is unable to perform satisfactorily, with or without reasonable accommodations, the essential duties of the job.*
- (d) *Evidence of conduct that indicates that the person is unfit or unsuitable for appointment.*
- (e) *Conduct that violates rule 3-1.5 [Integrity of Process].*
- (f) *Expiration of an applicant pool or eligibility.*

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Rule 3-7 Revocation of Appointment

3-7.1 Review of Appointments

Every appointment in the classified service is expressly subject to review by the department of civil service. If the department determines that an appointment violated a civil service rule or regulation, the department may order corrective action, including revocation of the appointment.

3-7.2 Methods of Review

The department of civil service may review any appointment as part of the department's audit function or as the result of a technical appointment complaint.

(a) Audit review.

- (1) Revocation of appointment.** *If the department of civil service audits an appointment and determines that the selection, appointment, or certification violated a civil service rule or regulation, the department may order corrective action, including revocation of the appointment. The department shall give written notice of the revocation to the appointing authority and the employee whose appointment is revoked.*
- (2) Subsequent technical complaint.** *An employee whose appointment is revoked, or the employee's appointing authority, may file a technical appointment complaint regarding a staff revocation order within 14 calendar days after the date the revocation order was issued. If a timely technical appointment complaint is filed, the revocation order is automatically stayed pending a decision or further order of the technical review officer.*

(b) Technical appointment complaint by candidate.

- (1) Technical appointment complaint authorized.** *If an unsuccessful candidate files a timely technical appointment complaint under rule 8-3 [Technical Complaints] and the technical review officer determines that the challenged appointment violated a civil service rule or regulation, the officer may order corrective action, including revocation of the challenged appointment.*
- (2) Notice to incumbent.** *If a technical appointment complaint is filed, the incumbent employee whose appointment is being challenged in the complaint is entitled to notice of the complaint and an opportunity to defend the appointment. If the technical review officer revokes an incumbent employee's appointment, that incumbent employee is bound by the determination of the technical review officer, including revocation of the incumbent employee's appointment.*

3-7.3 Effect of Revocation of Appointment

When the department of civil service or a technical review officer revokes an appointment, the employment status of the employee whose appointment is revoked is determined as follows:

- (a) Employee with continuing status.** *If the employee had continuing status at the time of the appointment, the employee is to be retained in a position within the principal department or autonomous agency that appointed the employee at a classification and level in which the employee had continuing status at the time of the appointment. If no such position is available within the depart-*

ment or agency at the time of the revocation, the employee may exercise employment preference.

- (b) **Employee without continuing status.** If the employee had no continuing status in the classified service at the time of the appointment, the appointing authority shall separate the employee from state employment, unless the employee has otherwise been properly appointed to another position.

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~~Rule 8-3—Technical Complaints~~

~~8-3.1—Complaint Regarding Technical Decision Authorized~~

~~An authorized individual, appointing authority, or organization may file a technical complaint with the department of civil service, as provided in this rule and the regulations.~~

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3. **DEFINITIONS**

A. Civil Service Commission Rule Definitions

- ~~1. **Act of violence** means any intentional, reckless, or grossly negligent act that would reasonably be expected to cause physical injury or death to another person.~~
- ~~42. **Applicant** means a person who requests to participate in an appraisal process.~~
- ~~23. **Applicant pool** means a group of applicants whom the department of civil service has determined to be qualified.~~
- ~~4. **Appointment** means an authorized act of an appointing authority employing a properly qualified person in a specific position in the classified service.~~
- ~~35. **Appraisal method** means a technique used to evaluate job-related knowledge, skills, abilities, competencies, and other qualifications to determine eligibility for a position in the classified service.~~
- ~~6. **Classified service** means the Michigan state classified civil service.~~
- ~~7. **Technical complaint** means a written complaint that a technical decision (1) violated article 11, section 5, of the Michigan constitution, (2) violated a civil service rule or regulation, or (3) was arbitrary and capricious.~~
- ~~8. **Technical decision** includes each of the following individual decisions:~~

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(b) Technical qualification decision means a civil service staff decision determining the qualifications and fitness of a candidate for a position in the classified service.

9. Threat of violence means any intentional communication or other act that threatens an act of violence and would cause a reasonable person to feel terrorized, threatened, or fear physical injury or death to oneself or another person.

B. Additional Definition as used in this Regulation

1. Employment Sanction means a limitation imposed by the Department of Civil Service on a person's eligibility to be considered for employment, appointment, transfer, or recall in the classified service.

4. STANDARDS

~~**A.** If the Department of Civil Service determines that a person has engaged in any act prohibited by rule 3-1.5 or rule 2-7.4(b), the Department may issue written sanctions. Sanctions may include, but are not limited to, the following:~~

- ~~1. Removal from all applicant pools and applicant referral mechanisms.~~
- ~~2. Prohibition from participating in future appraisal processes.~~
- ~~3. Ineligibility for appointment to a classified position.~~
- ~~4. Revocation of appointment and separation from the classified service.~~

~~**B.** The Department of Civil Service may sanction any person who takes, sells, distributes, circulates, or uses examination material without the express authorization of the Department of Civil Service.~~

A. Employment Sanctions Authorized.

1. Authorization. If the Department of Civil Service determines that a person is ineligible, unfit, or unsuitable for future employment, appointment, transfer, or recall in the classified service, the department may impose an appropriate employment sanction on the person.

2. Persons subject to sanction. The department may impose an employment sanction on any of the following persons:

a. A person dismissed for just cause by an appointing authority for any reason including, but not limited to, the following:

- (1) Political activities prohibited in rule 1-12 [Political Activities].*

- (2) Drug, alcohol, or testing behavior prohibited in rule 2-7 [Drug and Alcohol Testing], applicable regulation, departmental work rule, or individual requirement imposed by an appointing authority.
 - (3) Unethical or improper behavior prohibited in rule 2-8 [Ethical Standards and Conduct], applicable regulation, departmental work rule, or individual requirement imposed by an appointing authority.
 - (4) An act of violence, a threat of violence, or carrying or possessing a firearm or explosive at a state workplace or during actual-duty time, as prohibited in rule 2-20 [Workplace Safety], applicable regulation, departmental work rule, or individual requirement imposed by an appointing authority.
 - (5) Any act or behavior that (1) violated a civil service rule, civil service regulation, or departmental work rule and (2) represented a serious threat to the safety, security, integrity, or effectiveness of the classified workforce.
 - (6) Relevant criminal behavior before or during state employment.
 - b. A person who engaged in conduct that could have resulted in dismissal for just cause but who resigned from the classified service before completion of disciplinary proceedings.
 - c. A person who engaged in any act prohibited by rule 3-1.5 [Examinations: Integrity of Process].
 - d. A person who signed a release or agreement with an agent of the State of Michigan or an appointing authority consenting to an employment sanction or other express limitation related to employment in the classified service.
 - e. A person for whom there is adequate evidence of conduct that indicates that the person is ineligible, unfit, or unsuitable for appointment in the classified service.
 - f. A person convicted of one or more felony or misdemeanor crimes, as disclosed by a criminal history check or other trustworthy evidence.
 - g. A person dismissed for just cause by an appointing authority for engaging in any act or behavior that violated a provision of a collective bargaining agreement.
3. **Limitation on Appointing Authorities.** An appointing authority cannot take an action prohibited by an employment sanction. An appointing authority must reverse any action prohibited by an employment sanction.

If an appointing authority fails or refuses to reverse an action prohibited by an employment sanction, the Department of Civil Service may reverse the action.

B. Types of Employment Sanctions.

1. **Types.** An employment sanction may include one or more of the following:

- a. **Removal from applicant pools and applicant referral mechanisms.**
- b. **Prohibition from participating in appraisal processes.**
- c. **Designation as ineligible for appointment to one or more particular classified positions.**
- d. **Designation as ineligible for appointment in one or more particular departments or agencies.**
- e. **Revocation of an existing appointment and separation from the classified service.**
- f. **Other appropriate limitations on the status of the person.**

2. **Complete Employment Sanction.** A complete employment sanction is a sanction that prohibits the person from being examined for any classified position, placed or continued in any applicant or candidate pools, or appointed to any classified position. A complete sanction may be of limited or unlimited duration.

3. **Specific Employment Sanction.** A specific employment sanction is a sanction less comprehensive than a complete sanction. A specific sanction may be of limited or unlimited duration.

4. **Duration of Sanctions.**

- a. **If an employment sanction is not expressly limited in duration, it is imposed for an unlimited duration. An unlimited duration sanction does not expire, unless the Department of Civil Service modifies the sanction after a 3-year review authorized under standard 4(E).**
- b. **If the duration of an employment sanction is limited, the sanction automatically expires at the end of the sanction period, unless the Department of Civil Service changes the expiration date to an earlier date.**

~~C. Depending upon the nature and severity of the alleged violation, the Office of Compliance may conduct an investigation. The alleged violation may also be referred to the Department of State Police or other authorized police agency.~~

~~D. Nothing in this procedure precludes the Department of Civil Service from initiating civil action against, or referring for criminal prosecution, anyone who has engaged in any prohibited act.~~

~~E. If an appointing authority discovers that a person has engaged in any prohibited act, the appointing authority must notify the Department of Civil Service.~~

C. Procedures for Imposing Employment Sanctions.

1. Initiated by Civil Service Staff. If authorized staff of the Department of Civil Service determines that the department should impose an employment sanction for any reason authorized in the rules or regulations, the staff may issue a technical qualification decision and impose an appropriate sanction. The staff must give the sanctioned person written notice of the employment sanction imposed and why the person is deemed ineligible, unfit, or unsuitable for future employment, appointment, transfer, or recall in the classified service.

2. Initiated by Appointing Authority.

a. **Request.** An appointing authority may request in writing that the Department of Civil Service impose an appropriate employment sanction for any reason authorized in the rules or regulations.

b. **Review.** The Department of Civil Service shall review the request and issue a technical qualification decision granting or denying the request in whole or in part. If the technical qualification decision imposes an employment sanction, the department must give the appointing authority and the sanctioned person written notice of the employment sanction imposed and why the person is deemed ineligible, unfit, or unsuitable for future employment, appointment, transfer, or recall in the classified service. If the department denies the request, the department must give the appointing authority written notice of the decision.

3. Service of Decision. The Department of Civil Service must serve a copy of a technical qualification decision on a sanctioned employee by one of the following methods:

a. **By first class U.S. mail to the last known address of the sanctioned person.**

b. **By electronic delivery to the last known e-mail address of the sanctioned person.**

c. **By interoffice mail, if the sanctioned person is a classified employee.**

4. Types of Sanction.

a. **Permissive Sanctions.** Unless a mandatory sanction is required by the rules or regulations, the Department of Civil Service may impose any appropriate sanction authorized in the rules or regulations.

b. **Mandatory Sanctions.** The rules provide for the following mandatory sanctions:

(1) **Employee selected for test-designated position.** A classified employee selected for a test-designated position who fails or refuses to submit to a preappointment drug test, interferes with a testing procedure, or tampers with a test sample, must be prohibited from being appointed, promoted, assigned, recalled, or otherwise placed in a test-designated position, removed from all applicant pools for test-designated positions, and disqualified from test-designated positions for a period of 3 years, as required by rule 2-7.4(a)(2) [Drug and Alcohol Testing: Penalties; Employee selected for test-designated position].

(2) **New Hires.** An applicant whose conditional offer of employment is rescinded for failing or refusing to submit to a preemployment drug test, interfering with a test procedure, or tampering with a test sample must receive a 3-year complete sanction as required by rule 2-7.4(b)(1) [Drug and Alcohol Testing: Penalties; New Hires].

~~F. A sanction imposed under this regulation may be appealed through the technical appeal process, in accordance with rule 8-3 [Technical Complaints].~~

D. Appeal of Employment Sanction.

1. **General.** Except as provided in standards D(2) and D(3) below, a requesting appointing authority or a person who has an employment sanction imposed may appeal the technical qualification decision by filing a technical qualification complaint as provided in rule 8-3 [Technical Complaints] and regulation 8.02 [Technical Classification and Qualification Complaints]. The complaint must be filed within 14 calendar days after the date the Department of Civil Service issued the technical qualification decision.

2. **Rescission of Conditional Appointment; Drug Testing.** A person whose conditional offer of employment is rescinded under rule 2-7.4 [Drug and Alcohol Testing: Penalties] for failing or refusing to submit to a preemployment drug test, interfering with a test procedure, or tampering with a test sample must file a written complaint with the state personnel director as provided in rule 2-7.4(b)(2). The complaint must be received

by the state personnel director within 14 calendar days after the appointing authority mailed a written notice of rescission.

3. **Release or Agreement; No Appeal.** A person who has consented to an employment sanction in a written release or agreement cannot appeal the sanction.

4. **Further Appeal to Commission.** A final decision of a technical review officer or the state personnel director may be appealed to the Civil Service Commission as provided in rule 8-3.4 [Technical Complaints: Further Appeal to Commission Authorized], rule 2-7.4(b)(2)(D) [Drug and Alcohol Testing: Penalties: New Hires], rule 8-7 [Appeal to Civil Service Commission], and regulation 8.05 [Employment Relations Board Appeal Procedures].

5. **No Collateral Challenge.** In the technical qualification review or technical qualification appeal process, a person may not collaterally challenge the factual basis for discipline or the discipline imposed by an appointing authority. Challenges to discipline must be filed and heard in the appropriate grievance process.

~~G. A sanction that does not state a determinable ending date at the time of issuance continues in effect until the person sanctioned files a written petition to lift the sanction and the Department of Civil Service grants the petition in writing.~~

~~H. If a sanction does not state a determinable ending date at the time of issuance, it must state a date after which the person is eligible to petition the Department to lift the sanction. The petition-eligible date cannot exceed three years from the date the sanction is imposed. After the petition-eligible date, the person may petition the Department of Civil Service in writing to lift the sanction. If the Department determines that the person does not represent a threat to the integrity of the process or the safety of the classified service, the Department may lift the sanction. If the Department refuses to lift the sanction, the person may appeal through the established technical complaint process.~~

E. Later Modification of Employment Sanction.

1. **Sanctions of 3 Years and Less.** If an employment sanction has a duration of 3 years or less and no timely appeal of the technical qualification decision was filed as authorized in standard 4(D), the sanction cannot be reduced or modified under this standard 4(E).

2. **Sanctions over 3 Years.** Irrespective of whether a technical qualification appeal was filed as authorized in standard 4(D), an employment sanction of longer than 3 years, including an employment sanction of unlimited duration, may be reviewed once by the Department of Civil Service after the expiration of 3 years, as follows:

- a. **Request.** The sanctioned employee or the original requesting appointing authority must submit a written request to modify the sanction to the Department of Civil Service setting forth in detail why the employee is no longer ineligible, unfit, or unsuitable for employment in the classified service. The request must be received by the Department of Civil Service no later than 28 calendar days after the third anniversary of the date the sanction was issued.
- b. **Department Review.** The Department of Civil Service shall review the modification request and obtain any additional information necessary or useful for evaluating the request.
 - (1) If the department finds that the requesting party has failed to demonstrate that the sanctioned person is now eligible, fit, and suitable for employment in the classified service, the department shall issue a technical qualification decision denying the modification request.
 - (2) If the department finds that the requesting party has demonstrated that the sanctioned person is now eligible, fit, and suitable for employment in the classified service, the department shall issue a technical qualification decision removing or appropriately modifying the employment sanction.
3. **Notice of Decision.** The Department of Civil Service shall send a copy of the department's technical qualification decision to the requesting party and any other interested party.
4. **Final.** If an interested party disagrees with the department's technical qualification decision, the party may file a technical qualification complaint as provided in rule 8-3 [Technical Complaints] and regulation 8.02 [Technical Classification and Qualification Complaints]. The complaint must be filed within 14 calendar days after the date the Department of Civil Service issued the technical qualification decision on the person's request.

5. PROCEDURE

Responsibility	Action
Appointing Authority or <u>Complainant(if originator)</u>	1. Files complaint alleging prohibited practices identified in rule 3-1.5 or rule 2-7.4(b) <u>request for a sanction with the Department of Civil Service.</u>
Department of Civil Service	2. Investigates suspected violations <u>and</u>

Responsibility	Action
<u>Appointing Authority</u>	requests, (with or without, a formal complaint <u>request</u>).
	3. Reviews documentation provided by appointing authority or complainant and investigates further, <u>if necessary</u> .
	4. Determines whether a prohibited act occurred <u>if the person is ineligible, unfit, or unsuitable for future employment, appointment, etc.</u>
	5. If a prohibited act occurred <u>person is ineligible, unfit, or unsuitable</u> , determines <u>an</u> appropriate sanction <u>in accordance with rule 3-1.5, rule 2-7.4(b), rule 3-6, and this regulation.</u>
	6. Enters the <u>Creates a</u> sanction on the applicant record in HRMN and gives written notice of the sanction to the complainant and that identifies the person sanctioned <u>person on the ZP22.1. Removes sanctioned person from all appropriate applicant pools and employment lists.</u>
	7. <u>Issues technical qualification decision to give notice of the sanction to the sanctioned person and appointing authority (if applicable). Maintains documentation of the sanction.</u>
	8. <u>Before hiring any person or moving an employee to a test-designated position, checks HRMN ZP22.1 for sanction. For state employees, appointing authorities can also check HRMN Self Service, HR Statewide, Employee History (STWDE), Sanction Field.</u>
	9. <u>Contacts the Department of Civil Service with questions regarding sanctions.</u>
	<u>NOTE: Any applicants (state</u>

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Responsibility	Action
	<u>employee or non-state employee) having a sanction code of S1 (complete sanction) cannot be considered for any vacancy.</u>

CONTACT

Questions regarding this regulation should be directed to the Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-373-3048 or 1-800-788-1766; or by e-mail to MDCS-BHRS@michigan.gov.

NOTE: Regulations are issued by the State Personnel Director, under authority granted in the *State of Michigan Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.



~~Sanctions for Violating Appraisal Method Integrity~~
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